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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

JEROME S. SPEVACK,
Petitioner,

vs.

LEWIS L. STRAUSS, ET AL.,
Respondents.

BRIEF AMICUS CURIAE ON BEHALF OF ENGINEERS JOINT COUNCIL IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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INTEREST OF AMICUS CURIAE

Engineers Joint Council is a voluntary association of non-profit professional engineering societies formed for the purpose of coordinating the activities of the major national professional engineering societies in matters of general interest. Engineers Joint Council provides a focal point for making the resources of the engineering profession available, and promotes cooperation among the national professional engineering societies, thereby advancing the science and profession of engineering.

The membership of Engineers Joint Council includes national engineering societies, regional engineering societies, and federations of engineering societies which constitute approximately two hundred and fifty thousand of our nation's engineers and scientists.

Since Engineers Joint Council represents such a vast number of our country's engineers and the case at bar presents a serious threat to the fundamental rights of our nation's engineers and scientists, consent was obtained to file this brief.

The issue in this case which is of primary concern to Engineers Joint Council is as set forth in the petition:

> "By what means can an inventor protect the secrecy of a discovery disclosed to the Government in confidence until he secures United States and foreign patent protection?"

ARGUMENT FOR GRANTING THE WRIT

1. National Scope of the Issues

The issues involved in this case affect the welfare and security of our country's engineers and scientists as well as the Atomic Energy Commission. If our nation's inventors have no way of protecting their property rights, which is the necessary result of the decision of the lower court, the initiative of engineers and scientists will be curtailed at a time when our country is in dire need of scientific knowledge. Such result is contrary to the purpose stated by Congress in the Atomic Energy Act of 1954. The effect of the lower court's decision is to discourage rather than encourage scientific research at the very time in our history when our country is relying on scientific progress for its survival.

2. Construction of Atomic Energy Act of 1954

The issues in this case present substantial federal questions of first impression and of nationwide significance which should be settled by this court, namely:

a. Under the Atomic Energy Act, does an inventor who complies with the Act forfeit his rights under the Patent Act which insures confidential treatment of inventions?

b. Does the Atomic Energy Act permit a taking of private property and subsequent disclosure to the public, thereby destroying the inventor's property right without just compensation?

c. Should the Atomic Energy Act be construed as follows:

To permit publication of Restricted Data by the Commission only in those instances where the Data is owned outright by the federal government, but prohibit such pub-

lication in those instances where the patent belongs to a private individual but is disclosed to the Atomic Energy Commission in compliance with the Atomic Energy Act, or is the Atomic Energy Commission permitted to publish Restricted Data in both cases?

3. Denial of Jurisdiction by Lower Court is in Conflict With Prior Decisions of the Supreme Court of the United States

The lower court relied on the following cases in denying jurisdiction:

> *Larson v. Domestic and Foreign Commerce Corporation*, 337 U. S., 682, 93 L. Ed., 1645;
> *State of Arizona v. Hobby*, 94 U. S. App. D. C., 170, 221 F. 2nd, 498.

The case at bar does not come within the scope of these decisions since they dealt with property owned by the Federal Government, whereas this case deals with property owned by a private individual. In the *Larson* case, there was no claim that the officials were acting outside the scope of the statute nor was there any claim that the statute was unconstitutional.

In the case of *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S., 123, 95 L. Ed., 817, this court upheld a suit against the attorney general of the United States and cited the *Larson* case in its opinion:

> "Only recently this Court recognized that 'the action of an officer of the sovereign (be it holding, taking, or otherwise legally effect the plaintiff's property) can be regarded as so illegal as to permit a suit for specific relief against the officer as an individual * * * if it is not within the officer's statutory powers or, if within those powers, * * * if the powers or their exercise

in the particular case, are constitutionally void'." *Larson v. Domestic and Foreign Commerce Corp.* 337 U. S. 682, 701, 702, 93 L. Ed. 1628, 1642, 69 S. Ct. 1457.

Therefore, the decision of the lower court misapplied the *Larson* case and is in direct conflict with the doctrine set down by this court in the following cases:

Goltra v. Weeks, 271 U. S., 536, 70 L. Ed., 1074, 46 S. Ct., 613;

Ickes v. Fox, 300 U. S., 82, 81 L. Ed., 525, 57 S. Ct., 412;

Land v. Dollar, 330 U. S., 731, 91 L. Ed., 1209, 67 S. Ct., 1009;

United States v. Lee, 106 U. S., 196, 27 L. Ed., 171, 1 S. Ct., 240.

4. The Decision of the Lower Court Imposes an Unconstitutional Construction on the Atomic Energy Act of 1954

Article 1, Section 8 of the United States Constitution gives Congress the power to promote the progress of science and useful arts by securing for a limited time to inventors the exclusive right to their respective discoveries. The Fifth Amendment to the United States Constitution prevents a person from being deprived of property without just compensation. Consequently, under the ruling of the United States Court of Appeals for the District of Columbia, the Atomic Energy Act prohibits an inventor from enjoining the publication of his invention without just compensation, and the courts have no jurisdiction to entertain the action which of course is in violation of the United States Constitution.

CONCLUSION

Since the issues in this case are of nationwide importance and present substantial federal questions of first impression together with constitutional issues, it is respectfully requested that this court grant the petition for a writ of certiorari.

Respectfully submitted,

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